



UNDERGROUND STORAGE TANK CORRECTIVE ACTION SECTION ADDENDUM TO CONSENT ORDER NEGOTIATION GUIDELINES

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Introduction

Due to certain rules and statutes that are unique to the regulation of leaking underground storage tank sites, Consent Orders administered by the Arizona Department of Environmental Quality (ADEQ) Underground Storage Tank Corrective Action (USTCA) Section typically contain provisions that are not normally contained within Consent Orders administered by other ADEQ programs. This addendum to the *Consent Order Negotiation Guidelines* provides further guidance regarding these provisions. ADEQ strongly recommends reviewing this addendum, in conjunction with the *Consent Order Negotiation Guidelines*, before the initiation of Consent Order negotiations with the ADEQ USTCA Section.

Status Reports

Consent Orders entered by ADEQ typically contain a provision requiring the responsible party to submit a written status report to ADEQ every thirty calendar days from the effective date of the Consent Order. However, Consent Orders administered by the USTCA Section do not typically contain such a provision. Instead, the requirement to submit such reports is built into site characterization work plan and corrective action plan schedules that are submitted and approved pursuant to the Consent Order's compliance schedule. ADEQ then monitors the UST owner and/or operator's compliance with the approved work plan or correction action plan schedule.

State Assurance Fund

Pursuant to Arizona Revised Statutes (A.R.S.) § 49-1053(C), an owner or operator may not elect the State Assurance Fund (SAF) preapproval process if the corrective action costs included in the application for coverage pertain to a site that is the subject of an order issued pursuant to A.R.S. § 49-1013 or if the owner or operator has formally consented in writing to an administrative order. In addition, pursuant to Arizona Administrative Code R18-12-607.01(C)(4), the SAF preapproval rules shall not apply to corrective action expenses incurred under a Consent Order. However, an SAF applicant who enters into a Consent Order remains eligible for SAF reimbursement coverage, provided that the applicant is in compliance with the order. SAF eligibility does not guarantee reimbursement, and consequently, the SAF provisions have no relevance to the completion of corrective actions. Any reference to the SAF in the Consent Order, which attempts to make the completion of the required corrective actions contingent on SAF reimbursement, is prohibited.

Reservation of Rights

As with all Consent Orders entered by ADEQ, failure to comply with a Consent Order administered by the USTCA Section may subject the responsible party to further enforcement action. In addition, if a UST owner and/or operator fails to comply with a Consent Order administered by the USTCA Section, the ADEQ director may take corrective action with respect to the UST release(s), and recover from the responsible party the costs incurred for conducting the corrective action pursuant to Arizona Revised Statutes (A.R.S.) § 49-1017.